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In re Application of
RICHARDS *et al*
U.S. Application No.: 10/535,315
PCT No.: PCT/US2003/036869
Int. Filing Date: 18 November 2003
Priority Date: 18 November 2002
Attorney's Docket No.: 67901-17
For: THERMAL SWITCH, METHODS OF USE
MANUFACTURING METHODS FOR SAME

DECISION

This is a decision on the "Request for Correction of 371(c) Date" filed 13 March 2006 which is treated under 37 CFR 1.10(c). No petition fee is required.

BACKGROUND

Applicants filed papers to enter the national stage of international application PCT/US2003/036869. These papers were deemed as received on 17 May 2005 by the USPTO.

On 09 December 2005, the DO/EO/US mailed a Notification of Acceptance of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903) indicating a date of receipt of 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) requirements and all 35 U.S.C. 371 requirements of 17 May 2005. A filing receipt indicating a "Filing or 371(c) Date" of "05/17/2005" was also mailed the same day.

On 13 March 2006, applicants filed the subject petition which was accompanied by, *inter alia*, a copy of the Customer Copy of Express Mail label No. EV484958333US with the USPS receipt and a copy of USPS Track & Confirm records for Express Mail No. EV484958333US.

DISCUSSION

A review of the subject application indicates that the original documents are stamped as received by the Office on 17 May 2005. Applicants claim that the above-captioned application was originally submitted with the USPS using Express Mail on 18 May 2005, not 17 May 2005 and have requested that the filing receipt and Form PCT/DO/EO/903 reflect this.

Any correspondence received by the United States Patent and Trademark Office ("Office") delivered by Express Mail will be considered filed in the Office on the date of deposit with the USPS. 37 CFR § 1.10(a). Moreover, 37 CFR § 1.10(c) states:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date - in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date - in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date - in," and of any other official notation by the USPS relied upon to show the date of deposit.

A review of the subject application reveals that all the requirements of 37 CFR 1.10(c) have been satisfied. The Express Mail label number is listed on the Application Data Sheet filed with the original papers. Applicants included a copy of the Customer Copy of Express Mail label No. EV484958333US which appears to be stamped by the USPS on "5 17 05." The receipt for payment of the Express Mail documents indicated that it was paid on 18 May 2005 at 2:35 pm. Moreover, applicants provided a copy of the USPS Track/Confirm records for Express Mail label No. EV484958333US which verifies that the documents were accepted by the USPS in Seattle, WA on 18 May 2005 at 2:35 pm.

This evidence is acceptable for a grantable petition under 37 CFR 1.10(c). The original application papers should be stamped as received on 18 May 2005 pursuant to 37 CFR 1.10(a).

CONCLUSION

Applicants' petition pursuant to 37 CFR 1.10(c) is GRANTED.

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The Form PCT/DO/EO/903 and Filing Receipt mailed 09 December 2005 contain erroneous data and are both hereby **VACATED**.

This application is being forwarded to the Office of Patent Application Processing for processing including mailing a corrected Form PCT/DO/EO/903 and Filing Receipt indicating that the completion of all 35 U.S.C. 371 requirements and 35 U.S.C. 371(c) date of 18 May 2005.



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